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Gibraltar Land Company d/b/a Countywide Landfill and Local 324, International Union of Operating Engineers, AFL-CIO. Case 7-CA-49546

NOVEMBER 14, 2008

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN
SUPPLEMENTAL DECISION AND ORDER

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the second amended compliance specification.

On January 24, 2008, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent, Gibraltar Land Company d/b/a Countywide Landfill, to make whole discriminatees Reginald Truitt, James Howard, and David Spurr for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. On June 10, 2008, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees, on September 22, 2008, the Regional Director issued a second amended compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order, and notifying the Respondent that it should file an answer by October 14, 2008, complying with the Board's Rules and Regulations. Although properly served with a copy of the second amended compliance specification, the Respondent failed to file an answer.³

On October 10, 2008, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. Thereafter, on October 16, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion

should not be granted. The Respondent filed no response. The allegations in the motion and in the second amended compliance specification are therefore undisputed.

Ruling on Motion for Default Judgment⁴

Section 102.56(a) of the Board's Rules and Regulations provides that the respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the second amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the second amended compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of backpay due the discriminatees are as stated in the second amended compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Gibraltar Land Company d/b/a Countywide Landfill, Trenton, Michigan, its officers, agents, successors, and assigns, shall make whole discriminatees Reginald Truitt, James Howard, and David Spurr by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

¹ 352 NLRB No. 3 (2008).

² Case. 08-1370.

³ On June 25 and August 13, 2008, the Regional Director issued and served on the Respondent a compliance specification and amended compliance specification, respectively. On July 16, July 25, August 27, and September 5, 2008, respectively, the Respondent filed an answer, first amended answer, answer to amended compliance specification, and first amended answer to amended compliance specification. By letters dated October 1 and October 7, 2008, the Respondent withdrew all of its answers to the compliance specification and amended compliance specification and stated that it would not file an answer to the second amended compliance specification.

⁴ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Reginald Truitt	\$63,010.04
James Howard	16,731.00
David Spurr	0.00 ⁵
TOTAL BACKPAY:	\$79,741.04

Dated, Washington, D.C. November 14, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

⁵ As set forth in the second amended compliance specification, David Spurr would not have been employed during the period commencing June 18, 2006, the day he was unlawfully laid off, due to a lack of bargaining unit work. Therefore, he is not entitled to receive any backpay.

(SEAL) NATIONAL LABOR RELATIONS BOARD